dated April 26, 1995, for Model A340 series airplanes; as applicable.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 3,500 flight cycles.

(2) If any discrepancy is detected, prior to further flight, replace the spherical washer with a serviceable spherical washer in accordance with the applicable service bulletin. Thereafter, repeat the inspection at intervals not to exceed 3,500 flight cycles.

(b) Terminating action for the requirements of this AD consists of the replacement of all spherical washers located at the aft flap track-to-wing trailing edge attachment assemblies at tracks 2 through 5 (left-hand and right-hand) with improved spherical washers, in accordance with Airbus Service Bulletin A330–57–3016, dated April 26, 1995, for Model A330 series airplanes; or Airbus Service Bulletin A340–57–4021, dated April 26, 1995, for Model A340 series airplanes.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with Airbus Service Bulletin A330–57–3029, dated, April 26, 1995, for Model A330 series airplanes; or Airbus Service Bulletin A340–57–4033, dated April 26, 1995, for Model A340 series airplanes; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 22, 1995.

Issued in Renton, Washington, on October 30, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27307 Filed 11–6–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

[T.D. 95–96]

Annual User Fee for Customs Broker Permit; General Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of due date for broker user fee.

SUMMARY: This is to advise Customs brokers that for 1996 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association or corporate broker is due by January 16, 1996. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for fee: January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Gary Rosenthal, Entry (202) 927–0380.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit held by an individual, partnership, association, or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Section 111.96, Customs Regulations, provides that the fee is payable for each calendar year in each Broker district where the broker was issued a permit to do business by the due date which will be published in the Federal Register annually. Broker districts are defined in the General Notice published in the Federal Register, Volume 60, No. 187, Wednesday, September 27, 1995.

Section 1893 of the Tax Reform Act of 1986 (Pub.L. 99–514), provides that notices of the date on which a payment is due of the user fee for each broker permit shall be published by the Secretary of the Treasury in the Federal Register by no later than 60 days before such due date. This document notifies brokers that for 1996, the due date for payment of the user fee is January 16, 1996. It is expected that annual user fees for brokers for subsequent years will be due on or about the third of January of each year.

Dated: November 1, 1995.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 95–27529 Filed 11–6–95; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

26 CFR Part 1

[TD 8627]

RIN 1545–AN87

Limitation on Use of Deconsolidation To Avoid Foreign Tax Credit Limitations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to certain limitations on the amount of the foreign tax credit under section 904(i). The final regulations will affect the sourcing and foreign tax credit separate limitation character of income for purposes of the calculation of the foreign tax credit by certain related domestic corporations. The final regulations are necessary to prevent avoidance of the foreign tax credit limitations.

DATES: These regulations are effective January 1, 1994.

For dates of applicability, see § 1.904(i)–1(e) of these regulations.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Allison, 202–622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final Income Tax Regulations (26 CFR part 1) under section 904 of the Internal Revenue Code.

On May 17, 1994, a notice of proposed rulemaking (INTL–0006–90) relating to the foreign tax credit limitation imposed under section 904(i) was published in the Federal Register (59 FR 25584) (1994–1 C.B. 816).

Written comments responding to this notice were received. A public hearing was requested and held on October 17, 1994. After consideration of all the comments, the proposed regulations under section 904(i) are adopted as revised by this Treasury decision. The final regulations are substantially as proposed. The preamble to the proposed regulations contains a discussion of the provisions.

Explanation of Revisions and Summary of Comments

Common Parent of an Extended Affiliated Group

Section 1.904(i)–1(b)(1)(i)(B)(1) of the proposed regulations defined affiliates to include certain domestic corporations ultimately owned 80 percent or more by entities that are not includible

corporations. The final regulations are modified to require that the domestic corporations be ultimately owned by a common parent that is a corporation.

Commentators suggested that Congress did not intend to apply the rules of this section to domestic subsidiaries of a common foreign parent. However, section 904(i)(1) states that domestic corporations are affiliates under section 904(i) if those corporations would be affiliates under section 1504(a) without the exclusions contained in section 1504(b). Without the exclusion of foreign corporations under section 1504(b)(3), multiple chains of domestic corporations owned 80% or more by a foreign common parent would be affiliates under section 1504(a). Thus, it is clear that Congress intended broad application of this provision to structures such as those with foreign common parents. The examples in the legislative history using domestic common parents are merely illustrative. Therefore, no change to § 1.904(i)–1(b)(1)(i)(B)(1) was made in the final regulations in response to this comment.

Commentators suggested that the final regulations should be effective only for taxable years beginning after May 17, 1994, the publication date of the proposed regulations, for structures with a foreign common parent. Commentators also suggested that final regulations should not be applied to foreign common parent structures in existence prior to the enactment of section 904(i). The statute provides authority to address all structures, including foreign common parent structures. Therefore, no change in the effective date was made and no grandfather clause added with respect to such foreign common parent structures.

Determination of Taxable Income

Commentators requested clarification whether provisions such as §§ 1.861–11T and 1.861–14T, as well as the consolidated return provisions, apply to determine the taxable income of an affiliate in a separate category.

Section 1.904(i)–1(a)(1)(i) of the final regulations provides that each affiliate must determine its net taxable income or loss in each separate category, as defined in § 1.904–5(a)(1) and treating U.S. source income or loss as a separate category. In general, an affiliate may not use the consolidated return regulations in computing net taxable income or loss in each separate category. However, a consolidated group is treated as one affiliate, and such affiliate must use the consolidated return regulations (without regard to sections 904(f) and 907(c)(4)) in computing the affiliate's net taxable income or loss in each separate category. To the extent applicable in the absence of section 904(i) and these regulations, other provisions of the Code and regulations will be used in the determination of an affiliate's net taxable income or loss in a separate category under § 1.904(i)–1(a)(1)(i).

Section 1.904(i)–1(a)(1)(ii) of the final regulations states that each affiliate's net income in a separate category will be combined with net income of all other affiliates in the same separate category. However, net losses in a separate category are combined with other affiliates' income or loss in the same category, under § 1.904(i)–1(a)(1)(ii), only to the extent that the affiliate's net loss in the separate category offsets taxable income, whether U.S. or foreign source, of the affiliate with the net loss. The consolidated return provisions dealing with sections 904(f) and 907(c)(4) are then applied to the combined amounts in each separate category as if all affiliates were members of a single consolidated group.

Allocation Methods

The proposed regulations required that allocation be accomplished under ''any consistently applied reasonable method.'' Several commentators raised questions about the appropriateness of certain allocation methods. The final regulations adopt the proposed standard but have been clarified to provide that the determination of the reasonableness of a method is based on all of the facts and circumstances.

Section 1.904(i)–1(a) of the proposed regulations required consistent application of the allocation method chosen. Commentators requested clarification as to whether this consistency rule requires the same allocation method to be used by each affiliate or whether, instead, the rule requires consistency in the choice of an allocation method from year to year. The final regulations clarify that a method is consistently applied only if used by all affiliates from year to year. Once chosen, an allocation method may be changed only with the consent of the Commissioner.

Deemed Distributions

One comment noted that if a domestic corporation, affiliated by virtue of section 904(i) with another domestic corporation, makes a payment to that other domestic corporation in order to compensate the other corporation for an increase in its U.S. income tax as a result of the application of section 904(i), the payment may be a constructive dividend to a foreign parent, followed by a contribution to capital to the other domestic corporation. It was suggested that the rules of § 1.1502–33(d) be applied by the section 904(i) regulations to allow affiliates that have altered tax liabilities due to the effect of section 904(i) to allocate that liability among the expanded affiliated group without triggering a constructive dividend. The final regulations clarify that the consolidated return regulations, including § 1.1502–33(d), generally are not applicable to the extended affiliated group.

Consistency in Choice of Taxable Year

One commentator questioned whether year-to-year consistency in the choice of the base taxable year for the extended affiliated group is required under § 1.904(i)–1(c) of the proposed regulations, and whether the taxpayer must secure the permission of the Service to alter that choice. Failure to require consistency would permit the matching of affiliates' taxable years in the most advantageous manner each year and allow an expanded group to delay the affiliation of each newly acquired corporation, under § 1.904(i)–1(b)(1)(iii), for the maximum period of time. The final regulations clarify that the taxable year chosen must be used consistently from year to year, and may be changed only with the Commissioner's consent.

Consolidated Group Considered a Single Affiliate

The final regulations, in § 1.904(i)–1(b)(1)(ii), clarify that a consolidated group, the members of which are affiliates under this section, will be treated as a single affiliate for purposes of this section. Thus, for example, the computations under § 1.904(i)–1(a)(1)(i) by a consolidated group of affiliates will produce one set of calculations with respect to each separate category of foreign source taxable income or loss for the consolidated group.

Exception for Newly Acquired Affiliates

Section 1.904(i)–1(b)(1)(ii) of the proposed regulations stated that ''[a]n includible corporation will not be considered an affiliate of another includible corporation during *its* taxable year beginning before the date on which the first includible corporation first becomes an affiliate with respect to that other includible corporation.''[emphasis added]. A commentator questioned the identity of the corporation referenced by the emphasized ''its''. The final regulations, in renumbered § 1.904(i)–1(b)(1)(iii)(A), clarify that the reference is to the new affiliate.

Because of this ambiguity in § 1.904(i)–1(b)(1)(ii) of the proposed regulations, taxpayers may have lacked sufficient notice of the Service's interpretation of that provision. For this reason, includible corporations acquired from unrelated third parties prior to the thirty-first day after the publication of the regulations will be considered an affiliate on a date that is consistent with any reasonable interpretation of § 1.904(i)–1(b)(1)(ii) of the proposed regulations. Therefore, § 1.904(i)–1(b)(1)(iii)(A) will only apply to acquisitions of affiliates after December 7, 1995. With respect to acquisitions on or before December 7, 1995, § 1.904(i)–1(b)(1)(iii)(B) will apply.

It has also been clarified that the exception only applies to acquisitions from unrelated third parties and does not apply where the acquisition of the new affiliate is used to avoid the application of section 904(i). Both of these clarifications apply to any acquisition of an includible corporation after December 31, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. These regulations affect related domestic corporations not electing to file a consolidated return, or ineligible to file a consolidated return for all of the domestic corporations because of the existence of nonincludible entities. It is assumed that a substantial number of small entities do not operate in such structures. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Need for Final Regulations

This regulation, when adopted, would apply to taxable years of affiliates beginning after December 31, 1993. The final regulations will clarify the law in this area and will provide taxpayers with needed immediate guidance. The effective date is also necessary to prevent avoidance of tax. This regulation is not being issued subject to the effective date limitation of section 553(d) of 5 U.S.C.

Drafting Information

The principal author of these regulations is Kenneth D. Allison of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.904(i)–1 also issued under 26 U.S.C. 904(i). * * *

Par. 2. Section 1.904–0 is amended by:

1. Revising the introductory text.
2. Adding an entry for § 1.904(i)–1.

The revision and addition read as follows:

§ 1.904–0 Outline of regulation provisions for section 904.

This section lists the regulations under section 904 of the Internal Revenue Code of 1986.

* * * * *

§ 1.904(i)–1 Limitation on use of deconsolidation to avoid foreign tax credit limitations.

(a) General rule.
(1) Determination of taxable income.
(2) Allocation.
(b) Definitions and special rules.
(1) Affiliate.
(i) Generally.
(ii) Rules for consolidated groups.
(iii) Exception for newly acquired affiliates.
(2) Includible corporation.
(c) Taxable years.
(d) Consistent treatment of foreign taxes paid.
(e) Effective date.

Par. 3. Section 1.904(i)–1 is added to read as follows:

§ 1.904(i)–1 Limitation on use of deconsolidation to avoid foreign tax credit limitations.

(a) *General rule.* If two or more includible corporations are affiliates, within the meaning of paragraph (b)(1) of this section, at any time during their taxable years, then, solely for purposes of applying the foreign tax credit provisions of section 59(a), sections 901 through 908, and section 960, the rules of this section will apply.

(1) *Determination of taxable income*—(i) Each affiliate must compute its net taxable income or loss in each separate category (as defined in § 1.904–5(a)(1), and treating U.S. source income or loss as a separate category) without regard to sections 904(f) and 907(c)(4). Only affiliates that are members of the same consolidated group use the consolidated return regulations (other than those under sections 904(f) and 907(c)(4)) in computing such net taxable income or loss. To the extent otherwise applicable, other provisions of the Code and regulations must be used in the determination of an affiliate's net taxable income or loss in a separate category.

(ii) The net taxable income amounts in each separate category determined under paragraph (a)(1)(i) of this section are combined for all affiliates to determine one amount for the group of affiliates in each separate category. However, a net loss of an affiliate (first affiliate) in a separate category determined under paragraph (a)(1)(i) of this section will be combined under this paragraph (a) with net income or loss amounts of other affiliates in the same category only if, and to the extent that, the net loss offsets taxable income, whether U.S. or foreign source, of the first affiliate. The consolidated return regulations that apply the principles of sections 904(f) and 907(c)(4) to consolidated groups will then be applied to the combined amounts in each separate category as if all affiliates were members of a single consolidated group.

(2) *Allocation.* Any net taxable income in a separate category calculated under paragraph (a)(1)(ii) of this section for purposes of the foreign tax credit provisions must then be allocated among the affiliates under any consistently applied reasonable method, taking into account all of the facts and circumstances. A method is consistently applied if used by all affiliates from year to year. Once chosen, an allocation method may be changed only with the consent of the Commissioner. This allocation will only affect the source and foreign tax credit separate limitation character of the income for purposes of the foreign tax credit separate limitation of each affiliate, and will not otherwise affect an affiliate's total net income or loss. This section applies whether the federal income tax consequences of its application favor, or are adverse to, the taxpayer.

(b) *Definitions and special rules*—For purposes of this section only, the following terms will have the meanings specified.

(1) *Affiliate*—(i) *Generally.* Affiliates are includible corporations—

(A) That are members of the same affiliated group, as defined in section 1504(a); or

(B) That would be members of the same affiliated group, as defined in section 1504(a) if—

(*1*) Any non-includible corporation meeting the ownership test of section 1504(a)(2) with respect to any such includible corporation was itself an includible corporation; or

(*2*) The constructive ownership rules of section 1563(e) were applied for purposes of section 1504(a).

(ii) *Rules for consolidated groups.* Affiliates that are members of the same consolidated group are treated as a single affiliate for purposes of this section. The provisions of paragraph (a) of this section shall not apply if the only affiliates under this definition are already members of the same consolidated group without operation of this section.

(iii) *Exception for newly acquired affiliates*—(A) With respect to acquisitions after December 7, 1995, an includible corporation acquired from unrelated third parties (First Corporation) will not be considered an affiliate of another includible corporation (Second Corporation) during the taxable year of the First Corporation beginning before the date on which the First Corporation originally becomes an affiliate with respect to the Second Corporation.

(B) With respect to acquisitions on or before December 7, 1995, an includible corporation acquired from unrelated third parties will not be considered an affiliate of another includible corporation during its taxable year beginning before the date on which the first includible corporation first becomes an affiliate with respect to that other includible corporation.

(C) This exception does not apply where the acquisition of an includible corporation is used to avoid the application of this section.

(2) *Includible corporation.* The term *includible corporation* has the same meaning it has in section 1504(b).

(c) *Taxable years.* If all of the affiliates use the same U.S. taxable year, then that taxable year must be used for purposes of applying this section. If, however, the affiliates use more than one U.S. taxable year, then an appropriate taxable year must be used for applying this section. The determination whether a taxable year is appropriate must take into account all of the relevant facts and circumstances, including the U.S. taxable years used by the affiliates for general U.S. income tax purposes. The taxable year chosen by the affiliates for purposes of applying this section must be used consistently from year to year. The taxable year may be changed only with the prior consent of the Commissioner. Those affiliates that do not use the year determined under this paragraph (c) as their U.S. taxable year for general U.S. income tax purposes must, for purposes of this section, use their U.S. taxable year or years ending within the taxable year determined under this paragraph (c). If, however, the stock of an affiliate is disposed of so that it ceases to be an affiliate, then the taxable year of that affiliate will be considered to end on the disposition date for purposes of this section.

(d) *Consistent treatment of foreign taxes paid.* All affiliates must consistently either elect under section 901(a) to claim a credit for foreign income taxes paid or accrued, or deemed paid or accrued, or deduct foreign taxes paid or accrued under section 164. See also § 1.1502–4(a); § 1.905–1(a).

(e) *Effective date.* Except as provided in paragraph (b)(1)(iii) of this section (relating to newly acquired affiliates), this section is effective for taxable years of affiliates beginning after December 31, 1993.

Approved: September 27, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–27563 Filed 11–6–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Navy, Defense.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS PELICAN (MHC 53) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia 22332–2400, Telephone Number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PELICAN (MHC 53) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(f), pertaining to the display of all-round lights by a vessel engaged in mineclearance operations, and Annex I, paragraph 9(b), prescribing that all-round lights be located as not to be obscured by masts, topmasts or structures within angular sectors of more than six (6) degrees. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Section 706.2, certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605, is amended by adding the following ship to Table Four, paragraph 18: